

REMARKS

This responds to the Office Action mailed on February 11, 2008. Claims 6, 14 and 35 are amended; as a result, claims 6-21, 29 and 31-35 are now pending in this application. Claim 35 has been amended to address a clerical error.

Double Patenting Rejection

Claims 6-21 and 29-34 were rejected under a non-statutory obviousness-type double patenting rejection, specifically over claims 1-17 of U.S. Patent No. 6,679,461 to Hawkins in view of U.S. Patent No. 5,172,097 to Arnold.

Applicant does not admit that the claims are obvious in view of U.S. Patent No. 6,679,461. However, Applicant will consider submission of a Terminal Disclaimer upon indication of otherwise allowable subject matter.

§103 Rejection of the Claims

Claims 6, 7, 9, 11, 12, 13, 14, 15, 16, 18, 19, 21, 29, 31, 32, 33 and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkins et al. (U.S. Patent No. 5,855,342) (hereinafter "Hawkins '342") in view of Burgess et al. (U.S. Patent No. 7,102,089) (hereinafter "Burgess"); and further in view of Arnold (U.S. Patent No. 5,172,097) (hereinafter "Arnold"). Applicant respectfully traverses as set forth herein.

Claim 6 and its Dependent Claims

Applicant has amended claim 6 to clarify the recited subject matter. The amendment is supported at least by the specification in the paragraph beginning on line 11 of page 7. Applicant has searched the cited portions of Hawkins '342, Burgess, and Arnold and is unable to find reference to a rooftop support structure having the recited side surfaces, and a plate structure, at least a portion of the plate structure disposed onto at least a portion of the side surfaces, the plate structure being coupled with the support structure, as recited in claim 6. It is respectfully submitted that the above clarified subject matter renders the Burgess and Arnold references as nonanalogous art. Applicant respectfully submits that claim 6 as recited is patentable.

Insofar as the rejection applies to claim 6 as amended, Applicant respectfully traverses. The assertion that Burgess and Arnold are in analogous art relies on a conclusory recitation of a portion of In re Oetiker and on a recitation of structural features that allegedly teach the subject matter as claimed.¹ In re Oetiker states that “[i]n order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned,”² In re Oetiker also states that “it is necessary to consider ‘the reality of the circumstances’ – in other words, common sense – in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.” This requirement is intended to “defend against hindsight.”³

Applicant respectfully submits that the clarified subject matter shows why the references are reasonably pertinent to the particular problem for which the inventor was concerned. The rejection cannot show why a pressure actuated switching device to be used as a mat switch, drape sensor, or safety sensing edge for a motorized door, as recited in Burgess, is pertinent to the problem of supporting a structure on a rooftop surface.

Applicant respectfully submits that the rejection cannot show how the security lock box of Arnold, which is referenced as being useful for securing small objects such as keys,⁴ is pertinent to the problem of supporting a structure on a rooftop surface.

Because these references are in nonanalogous art, and the rejections of the Office have not provided some reason why one of skill in the art might consider them combinable, Applicant respectfully believes their combination is insufficient to provide a showing of obviousness. Accordingly, Applicant respectfully requests withdrawal of the rejection and allowance of claim 6, 7, 9, 11, 12, 13, 21, 29, 31, 32, 33 and 35. Claims 7, 9, 11, 12, 13, 21, 29, 31, 32, 33 and 35 are believed to be allowable at least because they ultimately depend on claim 6 and should be allowed for the reasons provided with respect to that claim.

Claim 14 and its Dependent Claims

¹ See In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

² Id.

³ See In re Kahn, 441 F.3d 977, 987 (Fed. Cir. 2006).

⁴ See Arnold, column 1, lines 9-12.

Applicant has amended claim 14 to clarify the recited subject matter. The amendment is supported at least by the specification in the paragraph beginning on line 11 of page 7. Applicant has searched the cited portions of Hawkins '342, Burgess, and Arnold and is unable to find reference to a rooftop support structure, having the recited side surfaces, and a plate structure, at least a portion of the plate structure disposed on the top surface and extending onto least a portion of the side surfaces, as recited in claim 14. Accordingly, claim 14 is believed to be allowable.

It is respectfully submitted that clarified subject matter renders the Burgess and Arnold references as nonanalogous art. Applicant respectfully submits that claim 14 as recited is patentable in view of the remaining references asserted by the Office.

Insofar as the rejection applies to claim 14 as amended, Applicant respectfully traverses. The assertion that Burgess and Arnold are in analogous art relies on a conclusory recitation of a portion of In re Oetiker and on a recitation of structural features that allegedly teach the subject matter as claimed.⁵ In re Oetiker recites that “[i]n order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.”⁶ In re Oetiker also states that “it is necessary to consider ‘the reality of the circumstances’ – in other words, common sense – in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.” This requirement is intended to “defend against hindsight.”⁷

Applicant respectfully submits that the rejection of the cannot show why the references are reasonably pertinent to the particular problem for which the inventor was concerned. The rejection cannot show why a pressure actuated switching device to be used as a mat switch, drape sensor, or safety sensing edge for a motorized door, as recited in Burgess, is pertinent to the clarified subject matter.

⁵ See In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

⁶ Id.

⁷ See In re Kahn, 441 F.3d 977, 987 (Fed. Circ. 2006).

Applicant further respectfully submits that the rejection also cannot show how the security lock box of Arnold, which is referenced as being useful for securing small objects such as keys,⁸ is pertinent to the clarified subject matter.

Because these references are in nonanalogous art, Applicant respectfully believes their combination is insufficient to provide a showing of obviousness. Accordingly, Applicant respectfully requests withdrawal of the rejection and allowance of claims 14, 15, 16, 18, 19. Claims 15, 16, 18 and 19 are believed to be allowable at least because they ultimately depend on claim 14 and should be allowed for the reasons provided with respect to that claim.

Claims 20 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkins '342 in view of Burgess; and further in view of Wong et al. (U.S. Patent No. 6,888,977) (hereinafter "Wong").

Claims 20 and 34 ultimately depend on claim 6 and because of this are believed to be allowable at least for the reasons set out above with respect to claim 6. Applicant further submits that Wong fails to remedy the shortcomings set out above. For example, Wong is titled "Polymeric Liquid Metal Optical Switch" and the Office has not shown how this subject matter is pertinent to the problem of supporting a structure on a rooftop surface. For at least this reason, withdrawal of the rejection of and allowance of claim 20 are respectfully requested.

Claims 8, 10 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkins '342 in view of Burgess; and further in view of Koncar et al. (U.S. Patent No. 5,942,347) (hereinafter "Koncar").

Claims 8 and 10

Claims 8 and 10 each depend on claim 6 and because of this are believed to be allowable at least for the reasons set out above with respect to claim 6. Applicant further submits that Koncar fails to remedy the shortcomings set out above. For example, Koncar is titled "Proton Exchange Membrane Fuel Cell Separator Plate" and the Office cannot show how this subject matter is pertinent to the problem of supporting a structure on a rooftop surface. For at least this

⁸ See Arnold, column 1, lines 9-12.

reason, withdrawal of the rejection of and allowance of claims 8 and 10 are respectfully requested.

Claim 17

Claim 17 depends on claim 14 and because of this is believed to be allowable at least for the reasons set out above with respect to claim 14. Applicant further submits that Wong fails to remedy the shortcomings set out above. For example, Wong is titled "Proton Exchange Membrane Fuel Cell Separator Plate" and the Office cannot how this subject matter is pertinent to the problem of supporting a structure on a rooftop surface. For at least this reason, withdrawal of the rejection of and allowance of claim 17 are respectfully requested.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6912


Date : August 11, 2008

By 
Timothy E. Bianchi
Reg. No. 39,610

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 11th day of August 2008.

PATRICIA A. HULTMAN

Name _____


Signature _____